

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2022-001

TO: John Engen, Dale Bickell, Leigh Griffing, Donna Gaukler, Shirley Kinsey, David Selvage, Nathan Mcleod, Jeremy Keene, Kevin Slovarp, Brian Hensel, Jolanda Cummings, Ashley Stayer, Ross Mollenhauer, Matt Lawson, Erin Pehan, Gordy Hughes, Brad Davis, Jaeson White, Scott Hoffman

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE January 13, 2022

RE: Public Works contracts for construction services costing in excess of \$25,000 are subject to Montana's Little Davis Bacon Act prevailing wage laws.

FACTS:

This week at least three (3) public works construction service contrast have been returned to city staff sender without approval for the reason that the public works contract documents provided to our office did not include Montana prevailing wages for projects costing more than \$25,000.

ISSUE(S):

Does Montana have a Little Davis Bacon Act pertaining to prevailing wages that must be paid for some public works construction contracts?

CONCLUSION(S):

Yes. Montana's Little Davis Bacon Act is set forth in section 18-2-401 MCA, et. seq..

LEGAL DISCUSSION:

Montana state law sets forth Montana's Little Davis Bacon Act in section 18-2-401 MCA. et. seq.: entitled "SPECIAL CONDITIONS-STANDARD PREVAILING RATE OF WAGES.. The Montana Department of Labor and Industry is responsible for enforcement of Montana's Little Davis Bacon Act.

Subsection 18-2-401 MCA. defines the term "public works contract" s meaning:

“(11)(a) ‘Public works contract’ means a contract for construction services let by the state, county, municipality, school district or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision IN WHICH THE TOTAL COST OF THE CONTRACT IS IN EXCESS OF \$25,000. The nonconstruction services classification does not apply to any school district that at any time prior to April 27, 1999, contracted with a private contractor for the provision of nonconstruction services on behalf of the district.

(b) The term does not include contracts entered into by the department of public health and human services for the provision of nonconstruction services for the provision of human services.” (emphasis added)

It is also important for city staffs to know that pursuant to section 18-2-422 MCA, bid specifications and public works contracts statutorily are to contain standard prevailing wage rates. Section 18-2-422 MCA states:

18-2-422. BID SPECIFICATIONS AND PUBLIC WORKS CONTRACT TO CONTAIN STANDARD PREVAILING WAGE RATE AND PAYROLL RECORD NOTIFICATION. ALL PUBLIC WORKS CONTRACTS AND THE BID SPECIFICATIONS FOR THOSE CONTRACTS MUST CONTAIN:

- (1) A provision stating for each job classification the standard prevailing wage rate including fringe benefits that the contractors and employers shall pay during construction of the project;
- (2) A provision requiring each contractor and employer to maintain payroll records in a manner readily capable of being certified for submission under 18-2-423, for not less than 3 years after the contractor’s or employer’s completion of work on the project; and
- (3) A provision requiring each contractor to post a statement of all wages and fringe benefits in compliance with 18-2-423. (emphasis added)

CONCLUSION(S):

Yes, Montana’s Little Davis Bacon Act is set forth in section 18-2-401 MCA et. seq..

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/s/ Jim Nugent

Jim Nugent, City Attorney

JN:jb